

EUGENE GARDNER, BYRON M. BARBEAU, JOHN R.  
REAVES, AND JACKSON L. HARDY

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JANUARY 31, 1956.—Committed to the Committee of the Whole House and  
ordered to be printed

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Mr. LANE, from the Committee on the Judiciary, submitted the  
following

R E P O R T

[To accompany H. R. 8306]

The Committee on the Judiciary, to whom was referred the bill (H. R. 8306) for the relief of Eugene Gardner, Byron M. Barbeau, John R. Reaves, and Jackson L. Hardy, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

This proposed legislation was submitted to the Speaker of the House by the Department of the Army, and referred to this committee for consideration, and after a careful review your committee recommends favorable consideration of the bill. Letter from the Secretary of the Army is as follows:

DEPARTMENT OF THE ARMY,  
Washington 25, D. C., December 7, 1955.

HON. SAM RAYBURN,  
*Speaker of the House of Representatives.*

DEAR MR. SPEAKER: There is enclosed herewith a draft of a bill for the relief of Eugene Gardner, Byron M. Barbeau, John R. Reaves, and Jackson L. Hardy. The submission of this proposed legislation is in accordance with procedures approved by the Secretary of Defense.

The purpose of this proposed legislation is to reimburse these Reserve officers for the losses sustained by them as the result of damage to their household goods. The losses occurred while these officers were on active duty in the Army and their household goods were bailed to an agent of the United States pursuant to competent authority.

On or about June 24, 1952, the Ferguson Moving & Storage Co., a corporation organized under the laws of the State of Ohio and engaged in the business of moving and storing merchandise, entered into a contract with the United States, through Headquarters, Ohio Military District, for the packing, crating, and marking, and for unpacking and uncrating of household goods, and for handling and marking of "hold baggage" during the period of July 1, 1952, to June 30, 1953, inclusive. On September 10, 1952, the warehouse of the Ferguson Co., located at 1220 Harrison Avenue, Cincinnati, Ohio, in which was stored the prop-

erty of more than 50 members of the Army and the Air Force, was severely damaged by fire. As a result of the fire, these military personnel sustained losses by reason of damage to and destruction of their household goods in varying amounts, and 1st Lt. Eugene Gardner, Col. Byron M. Barbeau, Maj. John R. Reaves, and Maj. Jackson L. Hardy sustained losses which have been determined by this Department, under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act of 1945 (59 Stat. 225), as amended (31 U. S. C. 222c), to be in excess of \$2,500. However, the act of July 3, 1952 (Public Law 439, 82d Cong.; 66 Stat. 322), placed a maximum limitation of \$2,500 on the amount which can be paid administratively under the provisions of the Military Personnel Claims Act of 1945, *supra*, the only statute under which these claims can be considered. The claims of these 4 officers have been allowed administratively in the amount of \$2,500, only, and a check in that amount has been sent to each of them. After the making of such payments, there remains a balance of damages sustained by these officers for which they have not been compensated. There is no method by which they may be reimbursed for the remaining portions of their losses other than through the enactment by the Congress of private legislation for their relief. There is enclosed herewith a memorandum setting forth personal data relating to these officers and pertinent facts concerning each of the claims enumerated in the proposed bill.

All of the household goods, for the damages to which these claims have been determined to be meritorious, were reasonable, useful, necessary, or proper for the claimants to have owned and had in their possession under the attendant circumstances. The losses occurred incident to their service while the household goods were bailed to an agent of the United States, and without any fault or neglect on the part of the officers involved. No part of the damages for which reimbursement is sought for these personnel by this proposed legislation, was covered by insurance. Each of these officers has made a demand upon the Ferguson Moving & Storage Co. for reimbursement of the loss sustained, but liability therefor has been denied by such company.

The Department of Justice has commenced a civil action against the Ferguson Co. for the loss sustained by the United States as a result of this fire. Paragraph 13, Army Regulations 25-100, dated August 20, 1953, which contains similar language to that of its predecessor (AR 25-100, January 16, 1950), implementing the Military Personnel Claims Act of 1945, as amended, provides as follows:

*"Transfer of rights against carrier or insurer.*—Whenever a carrier or insurer denies liability or fails to satisfy such liability and a claim for the property in relation to which the claim is made is approved under these regulations without deduction of the amount for which the carrier or insurer is deemed liable, the claimant by the acceptance of payment of such claim under these regulations will be deemed to have assigned to the United States to the extent of his right, title, and interest in and to any claim he may have against the carrier or insurer and to have agreed that he will, upon request, execute and deliver to the United States a written assignment thereof, together with the original or a copy of the bill of lading or contract, insurance policy, and all other papers which may be required to enable the United States to press the claim against the carrier or insurer. Upon the settlement of his claim by the United States, the claimant will be considered to have agreed to refund to the Government the amount of any subsequent recovery from the carrier or insurer."

Inasmuch as the United States has instituted an action against the Ferguson Moving & Storage Co., and in order not to risk placing in jeopardy any right, title, and interest in and to any claim which the Government has as a result of this fire, a proviso to that effect has been inserted in this proposed legislation.

Each of the individuals for the relief of whom this legislation is proposed has served faithfully and honorably in the Army and to require such personnel to bear these losses would be an extreme hardship on them. Accordingly, the Department of the Army recommends that this proposed legislation be enacted by the Congress.

The Congress, from time to time, has considered favorably claims of members of the Armed Forces for loss of personal property in excess of the \$2,500 limitation placed upon administrative payments under the provisions of the Military Personnel Claims Act of 1945. Recent cases are Private Law 494, for the relief of Paul G. Kendall (H. R. 5025); Private Law 497, for the relief of Walter Carl Sander (H. R. 685); and Private Law 933, for the relief of S. Sgt. Frank C. Maxwell (H. R. 7835), all enacted by the 83d Congress. An additional case, S. 3515, for the relief of John B. Gibbons, Jr., was under consideration by the Committee on the Judiciary, United States Senate, at the close of the second session of the 83d Congress, but it was not acted upon.

The total cost of this bill, if enacted, will be \$8,436.01.

The Bureau of the Budget advises that there is no objection to the submission of the proposed legislation for the consideration of the Congress.

Sincerely yours,

CHARLES C. FINUCANE,  
*Acting Secretary of the Army.*

MEMORANDUM OF FACTS CONCERNING THE CLAIMS REFERRED TO IN THE PROPOSED  
BILL "FOR THE RELIEF OF EUGENE GARDNER, BYRON M. BARBEAU, JOHN R.  
REAVES, AND JACKSON L. HARDY"

There are submitted below a list of the claimants included in the proposed bill, personal data relating to them, and statement of the pertinent facts out of which their claims arose:

1. *Eugene Gardner*

Eugene Gardner was born in Augusta, Ga., on December 9, 1918, and he has remained on continuous active duty in the Army from February 15, 1942, the date of his initial enlistment. On January 5, 1952, he was commissioned in the Army of the United States, being assigned service No. O990521, and subsequently he attained the grade of first lieutenant.

On July 10, 1952, pursuant to competent orders, Lieutenant Gardner was relieved from his assignment to the Fifth Infantry Division, Indiantown Gap Military Reservation, Indiantown Gap, Pa., and was assigned to duty with the United States Army, Europe. In connection with these orders, the household goods of Lieutenant Gardner were packed and put into storage in the warehouse of the Ferguson Moving & Storage Co. on August 11, 1952. As a result of the fire which occurred thereat on September 10, 1952, these goods were damaged extensively. On October 6, 1953, Lieutenant Gardner filed a claim with this Department under the provisions of the Military Personnel Claims Act of 1945, as amended, for reimbursement of his loss in the amount of \$5,181. The claim was processed within this Department under regulations prescribed by the Secretary of the Army in accordance with the Military Personnel Claims Act. After giving effect to depreciation of the items involved in the claim, it was determined by this Department that the claim is meritorious in the amount of \$3,979.40. However, in view of the limitation placed upon the amount which may be paid administratively on such claims by the act of July 3, 1952, a check in the amount of \$2,500 has been sent to Lieutenant Gardner, leaving a balance of damages for which he has not been reimbursed in the amount of \$1,479.40.

2. *Byron M. Barbeau*

Byron M. Barbeau was born at Waynesville, Ohio, on October 5, 1904. He is an officer in the Army of the United States being assigned service No. O918272, and was on active duty during the period of October 1, 1942, until September 20, 1947, and again from January 7, 1952, to September 16, 1953, when he reverted to inactive status in the grade of colonel.

On March 27, 1952, Colonel Barbeau received orders transferring him from duty at Fort Belvoir, Va., to Casablanca, in French Morocco.

Pursuant thereto, his household goods were removed from his home in Batavia, Ohio, on or about June 2, 1952, by a representative of the Ferguson Co., and they were transported to the warehouse in Cincinnati for packing and crating for overseas shipment. As a result of the fire occurring in this warehouse on September 10, 1952, these household goods were damaged extensively. The claim of Colonel Barbeau for reimbursement of his loss in the amount of \$4,521, was filed with this Department on April 28, 1953, under the provisions of the Military Personnel Claims Act of 1945, as amended. Subsequently, on November 18, 1953, after processing within this Department, it was determined that his claim is meritorious in the amount of \$2,963.68. However, in accordance with the act of July 3, 1952, limiting the amount which may be paid administratively under this act, a check in the amount of \$2,500 was sent to Colonel Barbeau, leaving a balance of damages for which he has not been reimbursed in the amount of \$463.68.

3. *John R. Reaves*

John R. Reaves was born at Rutherford, N. J., on September 24, 1912. He served as an enlisted man in the Army from March 25, 1941, until May 28, 1942, at which time he was discharged to receive a commission in the Army of the United States. He has remained on active duty in commissioned status, service No. O1284575, from May 29, 1942, and has attained the grade of major.

On or about August 4, 1952, incident to orders, dated April 10, 1952, transferring Major Reaves from the ROTC Instructor Group, Fort Hayes, Columbus, Ohio, to duty in Salzburg, Austria, his household goods were delivered into the possession of the Ferguson Co. and transported to their warehouse in Cincinnati, Ohio. Thereafter, these goods were damaged extensively in the fire occurring thereat on September 10, 1952. His claim, in the amount of \$10,764.71, for reimbursement of this loss under the provisions of the Military Personnel Claims Act of 1945, as amended, was filed with this Department on August 3, 1953, and, after processing, it was determined to be meritorious in the amount of \$7,444.39, on January 12, 1954. However, in view of the monetary limitation placed on the amount which may be paid under this act, Major Reaves has received the amount of \$2,500, only, leaving a balance of damages remaining unpaid in the amount of \$4,944.39.

#### 4. Jackson L. Hardy

Jackson L. Hardy was born at Hattiesburg, Miss., on December 14, 1905. He received an appointment as an officer in the Army of the United States on June 4, 1928, being assigned service No. O250977, and he has served on active duty in commissioned status continuously from December 1, 1941, achieving the grade of major.

During the latter part of August 1952, in connection with orders, dated July 7, 1952, effecting a permanent change of station of Major Hardy to Yokohama, Japan, he delivered his household goods to the transportation officer, ROTC Instructor Group, Cincinnati, Ohio, where he had been stationed. The goods were transported to the warehouse of the Ferguson Co. wherein, on September 10, 1952, they were damaged extensively. On April 14, 1953, Major Hardy submitted a claim to this Department under the Military Personnel Claims Act of 1945, as amended, for the loss sustained in this fire, in the amount of \$6,846.12. After processing of the claim within this Department, it was determined on January 12, 1954, that the claim is meritorious in the amount of \$4,048.54, but, because of the \$2,500 limitation placed on the amount which may be paid under this act in any one case, a check in the amount of \$2,500, only, was sent to Major Hardy. The amount of loss for which he has not been reimbursed is \$1,548.54.

#### Amounts for which reimbursement is sought:

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|-----------------------|--------------|
| Eugene Gardner.....   | \$1, 479. 40 |
| Byron M. Barbeau..... | 463. 68      |
| John R. Reaves.....   | 4, 944. 39   |
| Jackson L. Hardy..... | 1, 548. 54   |

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| Total amount for which reimbursement is sought..... | 8, 436. 01 |
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